

01.05.2023
Item No.06
Court No.6.
S. De

M.A.T. 75 of 2023
with
I.A. No. CAN/1/2023
I.A. No. CAN/2/2023

Mallika Das.
Vs
The State of West Bengal & Ors.

Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee,
Mr. S. Dey,
...for the appellant.

Mr. Pinaki Dhole,
Mr. Avishek Prasad,
..for the State.

Affidavit-of-service filed in Court today, be kept
on record.

The State is represented.

The Murshidabad Zilla Parishad is not
represented.

In re : I.A. No. CAN/1/2023

This is an application for condonation of delay of
102 days in filing this appeal. Causes shown being
sufficient, the delay is condoned.

I.A. No. CAN 1 of 2023 is, accordingly, disposed
of.

In re : MAT 75 of 2023 & I.A. No. CAN/2/2023

A judgment and order dated September 7, 2022,
whereby the appellant's writ petition being WPA 13015
of 2021 was in effect dismissed, is under challenge in

this appeal. The writ petitioner's case before the learned Single Judge was that her father was an employee of Sujgram Zilla Parishad who died-in-harness in the year 2001. In 2010, her brother applied for compassionate appointment in died-in-harness category with No Objection Certificate from the other legal heirs of the deceased employee. Unfortunately, her brother died in a road accident on July 15, 2010. The writ petitioner submitted a handwritten letter to the Additional Executive Officer, Murshidabad Zilla Parishad, on March 19, 2020, seeking appointment on compassionate ground as her father had died-in-harness in 2001. With the grievance that her representation was not being considered, the writ petitioner approached the learned Single Judge.

The learned Judge noted that the writ petitioner's application was not in prescribed form. The writ petitioner made the application for compassionate appointment about nineteen years after her father's demise. Even after the unfortunate death of her brother in 2010, for ten years she did not apply for compassionate appointment. The learned Judge rightly observed that compassionate appointment is not a matter of right. Such appointment is given to enable the family of the deceased employee to tide over immediate financial crisis particularly when the

deceased employee was the sole bread earner of the family. The learned Judge referred to paragraphs 11, 12 and 13 of the judgment of the Hon'ble Supreme Court in the case of ***Santosh Kumar Dubey Vs. State of U.P.***, reported in ***(2009) 6 SCC 481***. In that judgment, the Hon'ble Apex Court observed that the request for appointment on compassionate ground should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis that the family of the deceased may be faced with. However, compassionate appointment is not another source of recruitment nor can it be treated as a bonanza or as a right to get an appointment in Government service.

The learned Judge finally observed that the writ petitioner has been able to sustain herself for almost twenty years since the death of her father. There is also no reference in the writ petition as to whether there are other dependents who are being looked after by the writ petitioner. The learned Judge disposed of the writ petition without passing any order thereon. Hence, this appeal at the instance of the writ petitioner.

We have heard Mr. Chattopadhyay, learned advocate appearing for the appellant/writ petitioner, at

length. We have also heard Mr. Dhole, learned advocate for the State.

Mr. Chattopadhyay submitted that whether the delay in applying for compassionate appointment is unreasonable or not will depend on the facts of each case. In any event, ours is a welfare State. Social justice requires that the writ petitioner be considered for compassionate appointment as otherwise the family would be in distress. Mere delay in applying should not stand in the way of doing substantive justice. He relied on three decisions of the Hon'ble Supreme Court :-

i) 2000, Supreme Court Cases Volume-6, Page-493 (Balbir Kaur, T.K. Meenakshi Vs. Steel Authority of India Ltd.)

The main question which fell for determination in that case pertained to the interpretation of the Family Benefit Scheme as introduced in the NJSC Tripartite Agreement of 1983. In that context, the Hon'ble Supreme Court, at paragraph 19 of the judgment, observed as follows :-

“The concept of social justice is the yardstick to the justice administration system or the legal justice and as pointed out, the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is

made for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction”.

ii) 2007, Volume-8, Supreme Court Cases Page-549 (Mohan Mahto Vs. Central Coal Field Ltd.)

In this case, the Hon'ble Supreme Court after discussing various other decisions, observed that :-

“What should be a reasonable period would depend upon the rules operating in the field”.

In other words, the Honble Supreme Court held that no doubt an application for compassionate appointment would have to be made within a reasonable period from the death of the employee who died-in-harness, but, what the reasonable period will be, will depend on the facts of each case and vary from case to case.

iii) All India Reporter (Supreme Court Weekly), 2015 Page-3212 (Canara Bank Vs. M. Mahesh Kumar.)

The question that fell for determination in that case was whether the dependent family members of the deceased employee of the appellant/Canara bank were entitled to seek compassionate appointment on the basis of a 'Dying in Harness Scheme' which was passed vide a particular Circular. In that facts of that case, the Supreme Court noted that after the

respondent's father died in harness, the respondent applied **timely** for compassionate appointment as per the 1993 Scheme which was in force at that time. The appellant/Bank rejected the respondent's claim on 30.06.1999 recording that there were no indigent circumstances for providing employment to the respondent. Again on 07.11.2001, the appellant/bank sought for particulars in connection with the issue of the respondent's employment. The bank thereafter again rejected the respondent's case holding that the 2005 Scheme that had come into operation did not permit granting compassionate appointment to a legal heir of an employee who dies in harness but provides for only ex-gratia payment. The Hon'ble Supreme Court held that the Circular of 2005 being an administrative or executive order, the same cannot have retrospective effect so as to take away the right accrued to the respondent as per the Circular of 1993.

In the judgment, however, the Hon'ble Supreme Court referred to its earlier judgments on compassionate appointment which are all to the effect that it is well-settled that compassionate employment is given solely on humanitarian ground with the sole object of providing immediate relief to the deceased employee's family to tide over the sudden financial crisis. Such appointment cannot be claimed as a matter of right. The request is to be considered strictly

in accordance with the governing scheme and no discretion is left with any authority to make compassionate appointment de hors the scheme. An application for such employment must be made without undue delay. An appointment on compassionate ground is to meet the sudden crisis that the family may be faced with on account of the death or medical invalidation of the bread earner while in service.

None of the above three decisions advances the case of the appellant. On the contrary, the said decisions affirm that an application for compassionate appointment has to be made without undue delay.

In the present case, as the learned Single Judge has noted, the writ petitioner/appellant survived for nineteen years after her father's death in-harness before applying for compassionate appointment. Such a long unexplained delay, in our opinion, is definitely unreasonable. The appellant is not entitled to even an order directing the Zilla Parishad to consider her appointment. After nineteen years of the death of an employee who died in service, his legal heirs are not entitled to be considered for compassionate appointment.

While we may have full sympathy for the writ petitioner, sympathy cannot be the ground or basis for passing judicial orders. The principle of law laid down

by the Hon'ble Supreme Court in relation to compassionate appointment, disentitle the appellant to any order in the present proceedings.

We find no infirmity in the order under appeal.

The appeal being MAT 75 of 2023 is dismissed along with the application being I.A. No. CAN 2 of 2023.

There will be no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)